

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

HENRY L. JOHNSON,	)	
	)	
Plaintiff,	)	
	)	Case No. 02-3322-CV-S-DW
v.	)	
	)	
KENNETH CLAYTON, et al.,	)	
	)	
Defendants.	)	

**ORDER**

Pending before the Court is the Plaintiff's motion for summary judgment against the Defendant Robert Beard ("Beard"). See Docs. 80, 81. The only remaining defendant in this case is Beard (who is currently not represented by counsel), and he failed to file suggestions in opposition or otherwise respond to the pending motion. Despite numerous attempts to locate Beard, Plaintiff's counsel states that Beard's "whereabouts are unknown."

After the Plaintiff initiated this action, Theodore L. Johnson III ("Johnson") and John W. Housley ("Housley") entered their appearance on behalf of Defendant Beard and Defendant David Scott and filed an answer on the Defendants' behalf. See Doc. 11. Subsequently, however, and despite repeated requests by Johnson and Housley, Beard refused to communicate with them and also cancelled two scheduled meetings. Indeed, the last time Johnson or Housley were able to locate Beard was on August 25, 2003. Under these facts, the Court granted Johnson and Housley's motion to withdraw as counsel for Beard on May 5, 2004. See Doc. 59. As of the date of this Order, Beard has not obtained counsel and represents himself in this action.

Under the Court's Local Rules, all facts set forth in a motion for summary judgment that are not controverted by the non-moving party are deemed admitted. See L.R. 56.1(a). Therefore,

the Court assumes that Beard was a guard at the Greene County Jail and was responsible for supervising the Plaintiff during his incarceration. See Doc. 80, Plt's. Uncontroverted Material Facts, ¶ 2. On June 8, 2002, Beard wrongfully and without legal authority attacked Plaintiff, causing the Plaintiff both physical and mental injuries. Id. at ¶¶ 16-37. Based on the Plaintiff's uncontroverted facts, Beard's physical assault on the Plaintiff violated the Plaintiff's Eighth Amendment rights. Id. at ¶ 38. Therefore, it is hereby

ORDERED that the Plaintiff's motion for summary judgment (Doc. 80) with respect to Defendant Beard on the issue of liability is GRANTED; it is further

ORDERED that Plaintiff's counsel shall contact the Court within thirty (30) days from the date of this Order to schedule a hearing on damages and attorney fees; it is further

ORDERED that this case is removed from the trial docket that commences on June 27, 2005; it is further

ORDERED that the clerk of court shall mail a copy of this Order to Defendant Beard at his last known address by certified mail, return receipt requested.

SO ORDERED.

/s/ DEAN WHIPPLE  
Dean Whipple  
United States District Judge

Date: June 14, 2005